

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

FREDERIC S. BEITLER

Claimant

V.

SPIRIT AEROSYSTEMS, INC.

Respondent

AND

**INSURANCE COMPANY OF
STATE OF PENNSYLVANIA**

Insurance Carrier

Docket No. 1,071,881

ORDER

Respondent and its insurance carrier (respondent) request review of the January 22, 2015, preliminary hearing Order entered by Administrative Law Judge (ALJ) Ali Marchant. Claimant appears by counsel, Joseph Seiwert. Respondent appears by counsel, Vincent A. Burnett.

ISSUES

The ALJ ordered respondent to pay for cardiac testing necessary to determine whether claimant could safely proceed with surgery related to his compensable work injury.

Respondent argues claimant failed to prove his workplace injury is the prevailing factor for his preoperative cardiac testing. Therefore, respondent maintains it is not responsible for payment of the cardiac testing expenses.

Claimant contends the ALJ's Order should be affirmed. Claimant argues his preoperative cardiac testing does not require meeting the "prevailing factor" standard.

The sole issue for the Board's review is: is medical testing to clear claimant for surgery related to his work injury an authorized medical expense?

FINDINGS OF FACT

Having reviewed the entire record, the stipulations of the parties, and having considered the parties' briefs, the Board makes the following findings:

Claimant suffered a series of accidental injuries beginning in October 2014 while working for respondent. Claimant saw Dr. John Babb for his injuries on November 10, 2014. Dr. Babb's medical records state claimant had left hand pain, and index, ring and small finger trigger fingers. Dr. Babb noted past cortisone injections have not helped, and claimant requested surgery.

On November 11, 2014, claimant saw Dr. Troy Holderman for preoperative clearance for the trigger release surgery with Dr. Babb. Dr. Holderman's records note claimant's EKG revealed a left bundle branch block. Dr. Holderman cleared claimant medically, but sent him to Dr. Hossein Amirani for cardiac clearance because of the left bundle branch block.

Dr. Amirani saw claimant on November 19, 2014, for cardiac clearance for his work-related surgery. Dr. Amirani's medical records state claimant reported mild to moderate shortness of breath, worse since the last visit, aggravated by moderate activity and relieved with rest. Claimant's symptoms included fatigue, negative lower extremity edema and substernal chest pain.

Dr. Amirani recommended claimant's procedure be cancelled or delayed for preoperative stress testing. Dr. Amirani ordered a myocardial perfusion study/Bruce protocol and a 2-D w/CFD echocardiogram. In a letter dated December 3, 2014, Dr. Armani indicated claimant had no cardiac restrictions and a negative MPI stress test. Dr. Armani wrote, "[Claimant] may proceed with finger surgery from a cardiac standpoint."¹

PRINCIPLES OF LAW AND ANALYSIS

The ALJ did not exceed her jurisdiction by ordering payment of cardiac testing expenses for an otherwise compensable injury. K.S.A. 2013 Supp. 44-534a grants authority to an ALJ to decide issues concerning the furnishing of medical treatment, the payment of medical compensation, and the payment of temporary disability compensation. K.S.A. 2013 Supp. 44-534a also specifically gives the ALJ authority to grant or deny the request for medical compensation pending a full hearing on the claim. The ALJ's authority includes the possibility he or she decided the matter incorrectly.²

The Board can review only those issues listed in K.S.A. 2013 Supp. 44-534a(a)(2). Those issues are: (1) whether the employee suffered an accident, repetitive trauma or resulting injury, (2) whether the injury arose out of and in the course of the employee's employment, (3) whether notice is given, or (4) whether certain defenses apply. The term

¹ P.H. Trans., Resp. Ex. 2 at 4.

² See *Alleva v. Wichita Business Journal, Inc.*, No. 202,618, 1998 WL 599406 (Kan. WCAB Aug. 11, 1998).

“certain defenses” refers to defenses which dispute the compensability of the claim.³ The Board can also review preliminary decisions when a party alleges the ALJ exceeded his or her jurisdiction.⁴

Respondent cites *Ashcraft v. Good Shepherd's Center, Inc.*,⁵ in support of the argument that, under the post-2011 statutory changes to the Act, the cardiac testing can be reviewed on an appeal of a preliminary hearing. *Ashcraft* is distinguished from this case in that Mr. Ashcraft required cardiac surgery after his work related surgery, rather than preoperative testing.

Since a review of the ALJ's order by respondent does not raise an issue of compensability enumerated in K.S.A. 2013 Supp. 44-534a(2), and there has been no showing the ALJ exceeded her authority, the application for Board review in this issue will not be considered for lack of jurisdiction.⁶

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁷ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2013 Supp. 44-551(l)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

CONCLUSION

The ALJ did not exceed her jurisdiction in ordering payment for cardiac testing. The Board does not have jurisdiction to consider respondent's appeal.

³ See *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

⁴ K.S.A. 2013 Supp. 44-551(i)(2)(A).

⁵ *Ashcraft v. Good Shepherd's Center, Inc.*, No. 1,060,523, 2013 WL 1384396 (Kan. WCAB Mar. 14, 2013).

⁶ *Gosnell v. Adventures While Growing Childcare Center, Inc.*, No. 1,069,327, 2014 WL 4402476 (Kan. WCAB Aug. 18, 2014); *Willis v. Clearview City*, No. 1,067,116, 2014 WL 1340598 (Kan. WCAB Mar. 24, 2014); see also *Chappell v. Sugar Creek Packing Co.*, No. 1,068,774, 2014 WL 3055470 (Kan. WCAB June 5, 2014); *Reineke v. Preferred Personnel, Inc.*, No. 1,067,501, 2014 WL 889882 (Kan. WCAB Feb. 28, 2014); *Ramirez v. Murfin Drilling Co., Inc.*, No. 1,061,372, 2014 WL 889872 (Kan. WCAB Feb. 10, 2014); *Beaver v. Spangles*, No. 1,067,204, 2014 WL 517253 (Kan. WCAB Jan. 16, 2014); *Dominguez-Rodriguez v. Amarr Garage Doors*, No. 1,058,613, 2012 WL 1652979 (Kan. WCAB Apr. 24, 2012).

⁷ K.S.A. 44-534a.

ORDER

WHEREFORE, it is the finding, decision and order of the undersigned Board Member that respondent's appeal be dismissed for lack of jurisdiction.

IT IS SO ORDERED.

Dated this _____ day of April, 2015.

HONORABLE SETH G. VALERIUS
BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
nzager@sbcglobal.net
jjseiwert@sbcglobal.net

Vincent A. Burnett, Attorney for Respondent and its Insurance Carrier
vburnett@McDonaldTinker.com

Honorable Ali Marchant, Administrative Law Judge